STATE OF MICHIGAN

COURT OF APPEALS

DOUGLAS F. SYKES,

Plaintiff-Appellant/Cross-Appellee,

v

NORTHWEST TIRE AND SERVICE,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
December 21, 2006

No. 263698
Genesee Circuit Court
LC No. 03-076448-NO

Before: Zahra, P.J., and Cavanagh and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action entered in favor of defendant following a jury trial. We affirm.

Plaintiff first argues that sufficient evidence does not support the jury's verdict, and the trial court therefore erred in denying plaintiff's motion for a new trial. This Court reviews a trial court's denial of a motion for a new trial for an abuse of discretion. *Campbell v Sullins,* 257 Mich App 179, 193; 667 NW2d 887 (2003). "This Court gives substantial deference to a trial court's determination that the verdict is not against the great weight of the evidence. This Court and the trial court should not substitute their judgment for that of the jury unless the record reveals that the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Id.* (internal citations omitted). Also, the determination whether statements made by defendant's counsel constitute a judicial admission is a question of law that is reviewed by this Court de novo. *Chapdelaine v Sochocki,* 247 Mich App 167, 169; 635 NW2d 339 (2001).

Plaintiff asserts that the jury's determination that defendant was not the proximate cause of plaintiff's injuries is both against the great weight of the evidence and contrary to its determination that defendant was negligent. To establish a prima facie case of negligence, plaintiff was required to prove four elements: (1) a duty owed by defendant to plaintiff, (2) a breach of that duty, (3) causation, and (4) damages. *Case v Consumers Power Co,* 463 Mich 1, 6; 615 NW2d 17 (2000). In turn, proof of causation requires proof of both (a) cause in fact, and (b) proximate cause. *Skinner v Square D Co,* 445 Mich 153, 162-163; 516 NW2d 475 (1994). Cause in fact necessitates a demonstration that "but for" the actions of the defendant, the alleged injury would not have occurred. *Id.*, p 163. Proximate cause involves the examination of the foreseeability of consequences, and whether a defendant should be found legally responsible for

those consequences. *Id.* Proximate cause is defined as that which, in a natural and continuous sequence, unbroken by any independent, unforeseen cause, produces the injury. *McMillian v Vliet,* 422 Mich 570, 576; 374 NW2d 679 (1985). More than one proximate cause may exist, and if several factors contribute to produce an injury, "one actor's negligence will not be considered a proximate cause of the harm unless it was a substantial factor in producing the injury." *Brisboy v Fibreboard Corp,* 429 Mich 540, 547; 418 NW2d 650 (1988). The determination of proximate cause is a factual issue to be decided by the finder of fact. *Nichols v Dobler,* 253 Mich App 530, 532; 655 NW2d 787 (2002). Further, whether an intervening act constitutes a superseding cause is also typically a question for the finder of fact. *Cay v Richard's Industries, Inc,* 170 Mich App 665, 669; 428 NW2d 734 (1988). A superseding cause is one that intervenes to prevent a defendant from being liable for harm to a plaintiff that the defendant's antecedent negligence is a substantial factor in bringing about. *Ridley v City of Detroit*, 231 Mich App 381, 390; 590 NW2d 69 (1998).

In this case, defendant provided undisputed testimony that overheated radiators are designed to vent down rather than upward, so the spray outward from the radiator reservoir was both unexpected and unforeseeable. In addition, defendant presented evidence that the cause of plaintiff's injury was not the failure to bring plaintiff's vehicle into the service bay but, rather, a malfunction in the radiator overflow container. Thus, there was evidence presented from which a reasonable jury could conclude that an intervening force superseded any negligence attributed to defendant parking and examining plaintiff's vehicle outside a service bay.

Further, although plaintiff disputes having been warned by defendant's staff to stay away from the vehicle, an employee verified that a verbal warning was provided, but ignored by plaintiff. Plaintiff acknowledged that he was distracted by a cell phone call from his employer when he approached the vehicle. As such, plaintiff's own actions in disregarding the verbal warning and electing to approach the vehicle while permitting himself to be distracted by a phone call could reasonably have been determined by the jury to be an unforeseen and superseding cause of plaintiff's injury.

We reject plaintiff's contention that a statement made by defendant's counsel during trial constituted a judicial admission regarding proximate cause. "A statement is a judicial admission only if it is a statement made by a party or his attorney during the course of trial, and is a distinct, formal, solemn admission which is made for the express purpose of dispensing with formal proof of that particular fact at trial." *Gojcaj v Moser,* 140 Mich App 828, 833-834; 366 NW2d 54 (1985). When viewed in context, defense counsel's acknowledgement that, "nothing would have happened here had you pulled the vehicle in the bay and kept the customer outside," did not amount as an admission of either negligence or proximate causation. The statement by defense counsel merely acknowledged that had plaintiff had somehow been restrained from approaching the vehicle, the incident would not have occurred. This clearly is not an acknowledgement the "express purpose" of absolving plaintiff of his burden of proof regarding causation. Further, at the hearing on plaintiff's motion for a new trial, plaintiff counsel acknowledged that defendant "didn't admit that they were negligent." Given the concession by plaintiff's counsel that defendant did not admit to negligence, it is disingenuous to suggest that defense counsel acknowledged his client to be the proximate cause of plaintiff's injury.

Plaintiff also asserts that the jury's verdict was contradictory in finding defendant negligent but not the proximate cause of his injury and that such a verdict was against the great

weight of the evidence. As such, plaintiff contends the trial court erred in denying his motion for a new trial. "When a party challenges a jury's verdict as against the great weight of the evidence, this Court must give substantial deference to the judgment of the trier of fact. If there is any competent evidence to support the jury's verdict, we must defer our judgment regarding the credibility of witnesses." *Allard v State Farm Ins Co*, 271 Mich App 394, 406-407; 722 NW2d 268 (2006). Consistent with prior rulings of this Court and the Michigan Supreme Court, a jury's verdict is required to be upheld, "even if it is arguably inconsistent, '[I]f there is an interpretation of the evidence that provides a logical explanation for the findings of the jury.'" *Id.*, p 407, quoting *Bean v Directions Unlimited, Inc*, 462 Mich 24, 31; 609 NW2d 567 (2000). "'[E]very attempt must be made to harmonize a jury's verdicts. Only where verdicts are so logically and legally inconsistent that they cannot be reconciled will they be set aside.'" *Allard, supra*, at 407 (Citation omitted).

Here, the jury's determination that defendant was negligent, but that its negligence was not the proximate cause of plaintiff's injury, is supported by the evidence and is not inconsistent or contradictory. As noted by the trial court when denying plaintiff's motion for a new trial, there was little evidence presented demonstrating that defendant's negligence in parking and opening the hood of the vehicle outside the service bay was a proximate cause of plaintiff's injury. Further, as outlined above, the jury could reasonably have found that the malfunctioning overflow container constituted an intervening cause, which prevents "a defendant from being liable for harm to a plaintiff that the defendant's antecedent negligence is a substantial factor in bringing about." *Ridley, supra*. Thus, plaintiff's claim is without merit.

On cross appeal, defendant asserts that the trial court erred in determining that the no-fault act, MCL 500.3101 *et seq*., did not apply to plaintiff's claim. In light of our decision affirming the judgment of no cause of action, this issue is moot and we decline to address it. *Ewing v Bolden,* 194 Mich App 95, 104; 486 NW2d 96 (1992).

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Bill Schuette